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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

GEORGE G. BENETATOS and
CHOULOS, CHOULOS & WYLE, LLC,

Plaintiff,

vs.

HELLENIC REPUBLIC,

Defendant.

Case No. C 06-06819 SBA

**ORDER GRANTING DEFENDANT'S
RULE 12(c) MOTION FOR JUDGMENT
ON THE PLEADINGS**

Date: July 22, 2008
Time: 1:00 p.m.
Location: Courtroom 3
Judge: Hon. Sandra Brown Armstrong

I. BACKGROUND

Before filing the present action on or about November 2, 2006, plaintiff attorney George Benetatos had filed a Chapter 13 bankruptcy petition. However, in two sets of sworn bankruptcy schedules he failed to schedule any claim against the Hellenic Republic, despite the fact that, based on his own allegations in the present case, he had pre-existing claims against defendant for attorneys' fees and costs. After filing for Chapter 13 protection, plaintiff alleges that defendant became indebted to him for \$22,500.00 in additional fees and costs, which he seeks to recover in this action.

Defendant Hellenic Republic brought the present motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure to obtain dismissal of plaintiff

1 Benetatos' present claims, on the ground that plaintiff is judicially estopped from pursuing
2 previously unscheduled claims.

3 The motion for judgment on the pleadings came on regularly for hearing before this Court
4 on July 22, 2008. Daniel W. Hager and Russell S. Roeca appeared as attorney for defendant
5 Hellenic Republic, and George Benetatos appeared as attorney for plaintiff George G. Benetatos.
6 At the hearing, the Court granted defendant's motion in part, ruling that plaintiff's pre-petition
7 claim in the alleged amount of \$93,573.11 was barred under the doctrine of judicial estoppel. The
8 Court then requested supplemental briefing from the parties concerning the post-petition claim.
9 The present order addresses that \$22,500.00 claim.

10 **II. LEGAL STANDARD**

11 Motions for judgment on the pleadings are provided for by Rule 12(c) of the Federal
12 Rules of Civil Procedure and can be granted where, based on the allegations of the complaint and
13 matters of which the Court can take judicial notice, a plaintiff fails to state a claim.

14 "In the bankruptcy context, a party is judicially estopped from asserting a cause of action
15 not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure
16 statements. (*Hamilton v. State Farm*, 270 F.3d at 783, citing *Hay v. First Interstate Bank of*
17 *Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir.1992).)

18 **III. ANALYSIS**

19 Plaintiff Benetatos, in his own complaint in the present case, confirms unequivocally that
20 after he filed Chapter 13 bankruptcy he billed defendant regularly for post-petition fees and costs
21 in the amount of \$22,500.00, which he now claims. He undisputedly knew he had a claim for
22 unpaid post-petition fees and costs, yet failed to disclose that claim in not only his initial
23 schedules, but in his amended schedules as well.

24 Plaintiff had an obligation to schedule earnings and assets that he acquired after the
25 commencement of his Chapter 13 estate. (*Autos, Inc. v. Gowin*, 330 B.R. 788 (D. Kan. 2005); *In*
26 *re Harvey*, 356 B.R. 557 (Bkrtcy. S.D. Ga. 2006); *Thompson v. Quarles*, --- F.Supp.2d ----, 2008
27 WL 2794799 (S.D. Ga. 2008); *Chandler v. Samford University*, 35 F.Supp.2d 861, 864 (N.D.
28 Ala. 1999); *Brassfield v. Jack McLendon Furniture, Inc.*, 953 F.Supp. 1438 (M.D. Ala. 1996);

1 *Wolfork v. Tackett*, 273 Ga. 328, 540 S.E.2d 611 (2001); see generally, *De Leon v. Comcar*
 2 *Industries, Inc.*, 321 F.3d 1289 (11th Cir. 2003).)

3 In reliance on his representations in his schedules made under penalty of perjury, the
 4 bankruptcy court both affirmed his Chapter 13 Plan and granted him a discharge.

5 Thus, plaintiff Benetatos is, as a matter of law, judicially estopped from attempting to
 6 assert his post-petition claim against the Hellenic Republic. (*Hamilton v. State Farm*, 270 F.3d at
 7 785; *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir. 1992); *Rose v.*
 8 *Beverly Health And Rehabilitation Services, Inc.*, 356 B.R. 18, 23 (E.D. Cal. 2006).)

9 **IV. CONCLUSION**

10 Plaintiff Benetatos, having failed to disclose any post-petition claim against the Hellenic
 11 Republic in his sworn bankruptcy schedules, is judicially estopped from pursuing such
 12 undisclosed claims in this action and, therefore, his claims should be dismissed.

13 After considering the moving and opposition papers, the supplemental briefing, the
 14 arguments of counsel, and all other matters presented to the Court,

15 **IT IS HEREBY ORDERED THAT** defendant's motion for judgment on the pleadings
 16 is GRANTED and plaintiff Benetatos' post-petition claim in the amount of \$22,500.00 is,
 17 accordingly, DISMISSED.

18 **IT IS SO ORDERED.**

19
 20
 21 Dated: 9/2/08


 22 HON. SAUNDRA BROWN ARMSTRONG

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